

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

EDWARD WHEELER,

Case No. 2:15-CV-1772 JCM (CWH)

Plaintiff(s),

ORDER

V.

CITY OF HENDERSON, et al.,

Defendant(s).

Presently before the court is plaintiff Edward Wheeler's motion to amend his complaint. (ECF No. 23). No defendant has filed an opposition, and the time for doing so has passed. Also before the court is defendants City of Henderson and Henderson Police Department's motion to dismiss. (ECF No. 17). Plaintiff has not filed an opposition, and the time for doing so has passed.

Plaintiff initiated this lawsuit under 42. U.S.C. § 1983, bringing claims for violations of his Fourth and Fourteenth Amendment Rights. Officers employed by the defendants shot and killed plaintiff's pet dog while executing a search warrant on a property adjacent to his home. Mr. Wheeler alleges that no exigent circumstances or reasonable justifications exist for the killing of his pet.

Plaintiff filed an amended complaint before defendants filed responsive pleadings. (ECF No. 5). Thereafter, defendants City of Henderson and Henderson Police Department filed a motion to dismiss the amended complaint. (ECF No. 17). Instead of opposing the motion to dismiss, plaintiff met and conferred with defendants, and the parties reached an agreement to stipulate to the filing of a motion to file a second amended complaint. (*See* ECF Nos. 21, 22). Defendants reserved the right to oppose the motion but did not do so.

Federal Rule of Civil Procedure 15(a) provides that leave to amend “shall be freely given when justice so requires.” However, courts will deny leave to amend if: (1) it will cause undue delay; (2) it will cause undue prejudice to the opposing party; (3) the request is made in bad faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990).

Plaintiff represents that he does not seek leave to amend in bad faith, he has not caused undue delay, defendants are not prejudiced, and amendment is not futile. Defendants do not argue otherwise.¹ Having reviewed the amended complaint, the proposed amended complaint, and defendant's motion to dismiss, the court agrees. The court therefore finds that good cause appears to grant plaintiff's motion for leave to file a second amended complaint.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Edward Wheeler's motion for leave to amend his amended complaint (ECF No. 23) be, and the same hereby is, GRANTED

IT IS FURTHER ORDERED that defendants City of Henderson and Henderson Police Department's motion to dismiss (ECF No. 17) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that plaintiff Edward Wheeler shall file the proposed second amended complaint (ECF No. 23-1) within seven (7) days of entry of this order.

DATED July 26, 2016.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE

¹ Local Rule LCR 47-3 provides that “[t]he failure of an opposing party to include points and authorities in response to any motion constitutes a consent to granting the motion.” D. NEV. R. LCR 47-3.